IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.3567 OF 2000

Suresh Ramchandra Gite
r/o. Sushrut Hirawadi,
opp.Bhikusa Paper Mills,
Old Adgaon Naka, Panchvati,
Nasik - 422 003 ... Petitioner

V/s.

1. State of Maharashtra
2. Director of Ayurveda
having its office at Potdar
Hospital, Worli, Mumbai - 18
3. Principal, Ayurved Mahavidyalaya
Ganesh Wadi, Panchavati
Nasik - 422 003.
4. University of Poona
Gansh Klind, Pune 411 007
5. Dr.Suhas Vaychale
Technical Officer, Ayurveda
Food & Drugs Administration
Maharashtra Govt. having his
office at Bandra-Kurla Complex,
Bandra (E), Mumbai-51. ... Respondents

Mr.S.S. Pandit for Petitioner
Mr.S.R. Nargolkar, AGP, for Respondent-State

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **FEBRUARY 15, 2005**

ORAL JUDGMENT (PER NISHITA MHATRE, J.):

. The Petitioner by this Petition has sought a writ of Mandamus for cancelling the appointment order of Respondent No.5 as Associate Professor, Swasth Vritta dated 12.6.2000. A further prayer to direct Respondent Nos.1 to 4 to appoint him as an Associate Professor, Swasth Vritta in a College in a College of Respondent No.3 w.e.f. 14.7.2000 or any other suitable date has

also been made.

2. The Petitioner was employed as a Full-time demonstrator with Respondent No.3-College. His appointment was approved by the University of Poona, Respondent No.4 herein. On 18.11.1985, he was admitted to the course of M.D. Ayurveda, Swasth Vritta conducted by the University. The topic chosen by the Petitioner for his dissertation was approved by the University. In October 1991, the Petitioner acquired the degree of M.D. Ayurveda in Kaya Chikitsa and was recognised as a post-graduate teacher from 1994 to 1999. Various tests for teaching staff were advertised by Respondent No.3 in December 1999. The Petitioner applied for the post of Associate Professor in Swasth Vritta. After successfully appearing for an interview, the Petitioner was appointed as an Associate Professor on 12.6.2000 and worked as such till Respondent No.5 was appointed in his place.

3. The Petitioner has thus challenged the appointment of Respondent No.5 in his place as Associate Professor and has sought reappointment as Associate Professor. In the reply filed by the Director of Ayurved, Mumbai, it is averred that the Petitioner did not have the requisite experience in the concerned subject when the post of Associate Professor was

advertised and, therefore, he was ineligible for the post. This averment appears to be incorrect as pointed out by the Petitioner in his affidavit in rejoinder. He was appointed as a full time Demonstrator in the subject and thereafter as a Lecturer from 10.12.1990. He had thus, acquired the teaching experience of three years in the concerned subject when the post was advertised. In fact the Petitioner was also appointed by Respondent No.4 University as a paper setter for M.D. Swasth Vritta in the examination held in April, 2000. The exhibits to this rejoinder establish the fact that the Petitioner had the requisite experience of teaching the subject and therefore, was eligible for appointment. The only reason given in the affidavit in reply filed by the Director of Ayurved for not appointing the Petitioner is that he did not have the requisite teaching experience. The material on record before us does not lend any credence to this averment contained in the affidavit.

4. By an order dated 13.9.2000 while admitting the Writ Petition, this Court had directed Respondent Nos.2 to 4 to consider the Petitioner’s case afresh and to pass suitable orders within a period of four weeks from that date. It appears that despite this order, the Petitioner was informed only after about 2 years, by a letter dated 22.7.2002 that he was appointed to the post

of Associate Professor in the subject of Swasth Vritta w.e.f. 23.7.2002. This letter apparently does not take into consideration the orders passed by this Court while admitting the petition which directed the respondents to consider the Petitioner's case afresh and to pass suitable orders within four weeks from that date. No reasons have been furnished by the Respondents as to why the orders of this Court were not complied with within the stipulated time. Now that the Petitioner has been appointed to the post of Associate Professor w.e.f. 23.7.2002, the only question which remains is whether this should be the date of appointment or whether the Petitioner can be deemed to have been appointed at an earlier date. On a consideration of the material before us and the order passed while admitting the Writ Petition, we are of the view that the Petitioner should be deemed to be appointed w.e.f. 13.10.2000, that is four weeks from the date of the order of this Court. It is made clear that although the Petitioner would not be entitled to any salary for the period from 13.10.2000 to 22.7.2002, this period will be considered for other benefits including retiral benefits such pension, gratuity, etc.

5. Petition is, thus, partly allowed. Rule made absolute accordingly.